

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

BELLSOUTH COMMENTS

BELLSOUTH CORPORATION

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BELLSOUTH COMMENTS

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries (“BellSouth”), hereby submits its comments on the *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

On June 8, 2004, the Commission released an *NPRM* seeking comment on the Federal-State Joint Board’s *Recommended Decision* regarding high-cost universal service support and the process for designating eligible telecommunications carriers (“ETCs”). In its *Recommended Decision*, the Joint Board suggested, among other things, that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under Section 214 of the Communications Act of 1934, as amended.² The Joint Board also recommended that the

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004) (“*NPRM*”).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 19 FCC Rcd 4257, 4258, ¶ 2.

Commission limit the scope of high-cost support to a single connection that provides a subscriber access to the public switched telephone network.³

ETC Designation Process. As demonstrated more fully herein, BellSouth strongly supports the adoption of a set of minimal obligations for both the Commission and states to consider in ETC designation proceedings. Although BellSouth does not object to establishing permissive guidelines for states to use when evaluating ETC applications, in those instances in which the Commission has the jurisdiction to grant a carrier ETC status, application of the proposed set of minimal qualifications should be mandatory, not discretionary.

Scope of Support. BellSouth, however, does not support the Joint Board's recommendation to limit the scope of high-cost support to a single connection. Restricting support to primary lines would not only have a harmful effect on consumers and carriers but also pose insurmountable administrative challenges. BellSouth believes that the Commission's proposal to establish a core set of minimal qualifications for carriers seeking ETC status is a more effective and less harmful way to manage fund growth by ensuring that only capable, qualified, and committed carriers are granted the right to receive high-cost support.

Other Issues. BellSouth also urges the Commission to consider some modifications to a number of existing regulations regarding high-cost support. First, the Commission should modify the support received by ETC carriers that use unbundled network elements. Second, the Commission should require wireless carriers seeking ETC status to demonstrate that they are providing a signal to a customer's billing address. This showing can be made by requiring the customer to certify that service at the billing address is available, working, and adequate.

³ *Recommended Decision*, 19 FCC Rcd at 4258, 4280, ¶¶ 3, 58.

II. THE COMMISSION SHOULD ADOPT MINIMUM REQUIREMENTS THAT WOULD APPLY TO CARRIERS SEEKING ETC DESIGNATION IN BOTH RURAL AND NON-RURAL AREAS

BellSouth supports the Commission's efforts to establish a more rigorous and effective ETC designation process by adopting federal guidelines that would establish minimum ETC qualifications. The Commission has appropriately assumed a leadership role in this area and taken affirmative actions to ensure greater consistency and accountability in the ETC designation process. For example, on January 22, 2004, the Commission applied a "more stringent public interest analysis" in an ETC designation proceeding that took into account factors beyond satisfaction of the two minimum statutory eligibility requirements⁴ and the existence of increased competition.⁵ Specifically, the Commission "weigh[ed] numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame."⁶

⁴ Section 214(e) of the Act requires a carrier seeking ETC status to meet the minimum statutory requirements of (1) offering services that are supported by the federal universal service support mechanisms and (2) advertising the availability of such services. 47 U.S.C. § 214(e)(1).

⁵ *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, 1565, ¶ 4 (2004) ("*Virginia Cellular Order*").

⁶ *Virginia Cellular Order*, 19 FCC Rcd at 1565, ¶ 4.

The Commission has applied this “new public interest”⁷ analysis in every ETC proceeding since it first announced this new framework.⁸ In addition, the Commission’s recent approvals of ETC designation requests have been based, in part, upon carriers’ specific commitments to provide service to requesting customers outside of their coverage areas by modifying or deploying additional equipment or facilities and providing annual progress reports on their build-out plans.⁹ All of these actions are fully consistent with the Joint Board’s *Recommended Decision*. Moreover, the commitments and obligations imposed by the Commission in the recent ETC designation proceedings are encompassed in the minimum eligibility requirements detailed in the *Recommended Decision*. BellSouth supports the adoption of the minimum qualifications proposed by the Joint Board, because they create a public interest standard that satisfies the multiple roles of ensuring that only qualified and committed carriers obtain ETC status, the fund size remains reasonable and sufficient, and consumers are not harmed.

Further, BellSouth does not object to allowing states some flexibility in the ETC designation process by making the proposed guidelines non-binding upon the states. To give structure and consistency to the ETC designation process and fulfill their statutory obligation to

⁷ *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d/b/a Saipancell; Petition for Designation as an Eligible Telecommunications Carrier on the Islands of Saipan, Tinian, and Rota in the Commonwealth of the Northern Mariana Islands*, CC Docket No. 96-45, *Order*, DA 04-2268, ¶ 6 (rel. July 23, 2004) (“*Guam Cellular Order*”).

⁸ *See Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 6422, 6424, ¶ 4 (2004) (“*Highland Cellular Order*”); *Guam Cellular Order*.

⁹ *Virginia Cellular Order*, 19 FCC Rcd at 1570-71, ¶¶ 14-16; *Highland Cellular Order*, 19 FCC Rcd at 6429-30, ¶¶ 15-17; *Guam Cellular Order*, ¶ 11.

act in the public interest, states should apply the recommended set of minimum qualification requirements in all ETC designation proceedings (rural and non-rural), and, as the Joint Board suggests, retain the flexibility to adopt additional obligations, if warranted.¹⁰

If the Commission adopts the proposed permissive guidelines, it must take concrete steps to encourage the maximum use and application of these guidelines. These steps include following the guidelines itself. In those instances in which the Commission has the authority to designate a carrier as an ETC in a federal proceeding, the Commission must engage in its own rigorous public interest analysis and apply the proposed eligibility requirements as it has done in recent ETC proceedings. Application of the eligibility standards in federal ETC designation proceedings should be mandatory, not discretionary.

In addition, the Commission should affirmatively urge states to apply the minimum qualification requirements when evaluating whether an ETC designation will serve the public interest. If a state does not follow the guidelines, perhaps the state should be required to provide the Commission with an explanation. Understanding the reasons behind a state's decision not to apply the guidelines would enable the Commission to analyze the effectiveness of the guidelines and explore possible ways to improve them. In order to achieve the maximum benefits of a more rigorous public interest standard, the Commission as well as the states must require carriers seeking ETC designation to satisfy a set of minimum eligibility obligations. The ETC designation process must be strengthened both at the federal and state levels; otherwise, the effectiveness and the benefits derived from the proposed framework will be diluted.

¹⁰ *Recommended Decision*, 19 FCC Rcd at 4261, ¶ 10.

BellSouth supports the specific eligibility requirements set forth in the *Recommended Decision*. Under the public interest framework proposed by the Joint Board, in addition to demonstrating compliance with the statutory requirements specified in Section 214(e)(1), a carrier seeking ETC designation would have to demonstrate the following: (1) adequate financial resources and ability to provide quality service;¹¹ (2) capability and commitment to provide the supported services throughout the designated service area;¹² (3) the ability to remain functional in emergencies;¹³ (4) satisfaction of consumer protection requirements;¹⁴ and (5) the quantity of local usage.¹⁵

Although BellSouth supports the application of each of these qualification requirements in an ETC designation proceeding, it stresses the importance of two in particular. First, BellSouth agrees with the Joint Board that a carrier seeking ETC status should be required to demonstrate that it can and will provide to all customers in a designated area service that is comparable to that provided by the carrier of last resort, typically the incumbent.¹⁶ Section 214(e)(4) allows an ETC to relinquish its ETC status in an area served by multiple ETCs upon advance notice to the appropriate commission.¹⁷ A condition of authority to relinquish ETC status is the ability of the remaining ETC to serve all of the customers served by the relinquishing carrier. This eligibility requirement is critical because, given the tenuous state of

¹¹ *Recommended Decision*, 19 FCC Rcd at 4266, ¶ 22.

¹² *Id.* at 4266-69, ¶¶ 23-29.

¹³ *Id.* at 4269-70, ¶ 30.

¹⁴ *Id.* at 4270-71, ¶¶ 31-34.

¹⁵ *Id.* at 4271-72, ¶¶ 35-36.

¹⁶ *Id.* at 4266, ¶ 23.

¹⁷ 47 U.S.C. § 214(e)(4).

the telecommunications marketplace and the increased pressure on the high-cost fund, it is possible that more and more incumbents may find themselves unable to continue providing service in some areas due to financial constraints. Adding the qualification described above would ensure that consumers are not harmed, thereby advancing the public interest.

Another proposed eligibility requirement of import is a carrier's ability to remain functional in emergencies.¹⁸ The Commission and state commissions have an obvious interest in making sure that the public has access to reliable communications services. Moreover, network reliability has taken on even greater importance in the wake of the terrorist activities of September 11, 2001. As the Commission recently pointed out in a proceeding to consider modifications to its network outage reporting requirements, there is a need for immediate, secure, and reliable communications services, especially during times of crisis.¹⁹ Thus, it serves the public interest for the Commission and states to consider a carrier's ability to provide service during emergencies when evaluating an ETC application.

In sum, BellSouth fully supports the adoption of the Joint Board's recommended eligibility requirements for use by the Commission and the states when evaluating whether an ETC designation will serve the public interest. The Commission and the states, both of which are required by law to engage in more than a cursory review of an ETC request,²⁰ should apply these standards in all ETC proceedings (rural and non-rural). Moreover, states should retain the flexibility to apply additional qualification obligations, if deemed necessary.

¹⁸ *Recommended Decision*, 19 FCC Rcd at 4269-70, ¶ 30.

¹⁹ *See New Part 4 of the Communications Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Notice of Proposed Rulemaking*, 19 FCC Rcd 3373, 3375-76, ¶¶ 1-3 (2004).

²⁰ *See* 47 U.S.C. §§ 241(e)(2) and (6).

III. THE COMMISSION SHOULD NOT LIMIT SUPPORT TO PRIMARY OR SINGLE LINES

The Commission should reject the Joint Board's suggestion to limit the scope of high-cost support to a single connection that provides access to the public switched telephone network.²¹ Instead, the Commission should retain the existing process, which provides support for all lines. As demonstrated more fully below, maintaining support for all lines is necessary to ensure that consumers in high-cost areas are not deprived of reasonably comparable and affordable services and that carriers retain the incentive to invest in high-cost areas. In addition, the administrative challenges associated with limiting support to primary lines make this approach unworkable.

Limiting support to primary lines would be harmful to consumers in high-cost areas. These consumers would be deprived of many of the telecommunications and information services available to customers in urban areas. For example, many consumers in rural areas use second lines for dial-up access to the Internet. If support were limited to primary lines, carriers would have to charge higher rates for second lines to cover their costs due to the loss of universal service support. These second lines would become too expensive for consumers in high-cost areas. Such a result would be especially harmful to business customers, which typically have more than one line for voice and data services. The Joint Board's recommended primary line approach would cripple small and rural business as the rates charged for additional voice lines and data lines would significantly increase. To protect consumers across the nation and ensure continued access to telecommunications and information services at reasonably comparable rates, the Commission should reject the primary line proposal.

²¹ See *NPRM*, ¶ 3; *Recommended Decision*, 19 FCC Rcd at 4279-80, ¶ 56.

BellSouth also objects to limiting support to primary lines because of the adverse impact on network investment and carrier build-out plans. Restricting support to primary lines ignores the realities of constructing and maintaining a network. Carriers' networks are designed and built to provide service to a particular service area, not to a single customer or to one line in a residence. As such, network investment is calculated based upon the cost to serve a particular area, again not to serve a single customer or single residential line. If a carrier is unable to receive support beyond a single line, the incentive to deploy adequate facilities to meet demand is significantly reduced. In order to recover its costs, that carrier would have to charge higher rates for non-primary line service – rates that would not be affordable to the public. Similarly, limiting support to primary lines would have a severe impact upon carriers currently receiving support. For those carriers that entered a market and constructed their networks based upon past assurances of sufficient universal service support, eliminating support for all lines could jeopardize those carriers' ability to continue serving customers in an affordable manner. In the end, the ultimate victim would be the consumer, who is likely to face limited, more expensive service. To ensure that carriers retain the incentive to invest and deploy facilities in high-cost areas, the Commission must continue to allow universal service support for all lines.

Neither restating support, providing lump sum payments, or freezing existing support as proposed by the Joint Board make the primary line approach any more palatable.²² None of these proposals do anything to decrease the fund size. Funds still would be needed to provide the support necessary to minimize the harm to existing ETCs. Moreover, it is unclear how long these transitional measures would need to remain in place. Arguably, they would have to

²² *Recommended Decision*, 19 FCC Rcd at 4288-90, ¶¶ 73-76.

continue indefinitely in order to protect ETCs and consumers in high-cost areas. These proposals represent nothing more than a band-aid. Indeed, BellSouth agrees with certain members of the Joint Board that “[r]ebasing and similar hold harmless and lump sum payments would at best only temporarily address this problem.”²³ Because, as demonstrated above, the harm and costs imposed upon consumers and carriers by a single connection approach far outweigh any perceived benefits, the Commission should not limit high-cost support to primary lines.

Another justification for continuing support for all lines is the administrative challenges associated with a primary line approach. Recognizing the administrative obstacles associated with modifying the scope of support, the Joint Board conditioned its recommendation upon “the Commission’s ability to develop competitively neutral rules and procedures that do not create undue administrative burdens.”²⁴ Seven years ago, the Commission rejected a similar Joint Board recommendation to limit high-cost support to primary lines.²⁵ The same concerns and administrative issues remain valid and actually have become more problematic in the current environment given the increased number of ETCs in existence today.

To date, no party has developed a viable method for properly identifying a primary line and for policing such a framework. Indeed, the record is full of examples of problematic situations for which there is no identifiable solution. For example:

²³ *Recommended Decision*, 19 FCC Rcd at 4321, Joint Statement of Commissioners Jonathan S. Adelstein, G. Nannette Thompson, Regulatory Commission of Alaska, and Bob Rowe, Montana Public Service Commission, Approving in Part, Dissenting In Part.

²⁴ *Id.* at 4292, ¶ 81.

²⁵ *Federal-State Joint Board*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8829-30, ¶¶ 95-96 (1997).

1. Where two or more people in a household each have a different line, which line is considered the primary line eligible for support?
2. Is the primary line the first line established at an address or the line with the most usage?
3. Does the definition of a primary line differ in the residential and business context?
4. If a customer has two lines, one from the incumbent and one from a CLEC, which carrier would receive support and who would make that determination?
5. If a customer has both wireless and wireline service, which line is considered primary?

Not only does BellSouth believe that these issues are impossible to resolve in a competitively neutral and cost-effective manner, but BellSouth also is concerned about the potential for abuse created by a primary line framework. If the Commission limits support to primary lines, deceptive practices are almost certain to emerge. A carrier would have increased incentive to engage in “slamming” or develop marketing and business practices to entice consumers to select it as the provider of the primary line. To avoid these pitfalls and “gaming” opportunities, the Commission should continue to allow support for multiple lines.

IV. THE COMMISSION SHOULD MODIFY THE METHODOLOGY FOR CALCULATING SUPPORT FOR ETCs USING UNBUNDLED NETWORK ELEMENTS

BellSouth suggests that the Commission modify its rules governing the calculation of high-cost support for competitive ETCs utilizing unbundled network elements (“UNEs”). Under the current rules, a competitive ETC that provides supported services utilizing UNEs receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC.²⁶ As the

²⁶ 47 C.F.R. § 54.307(a)(2).

Commission has pointed out, “[s]ome competitive UNE-based ETCs serving high-cost areas may receive support equal to the full price of the UNEs they purchase from the incumbent LEC.”²⁷

This result is not “competitively neutral.”

BellSouth therefore recommends the following modification to the current rule. The competitive ETC should receive only 76% of the difference between the UNE price and the statewide average forward-looking costs or what the incumbent receives, whichever is less. For incumbent LECs, the forward-looking support mechanism provides support for 76% of statewide average costs above the nationwide average cost benchmark.²⁸ The Commission adopted this calculation to ensure that the recovery mechanism took into account the Commission’s separations rules and the division of cost recovery responsibility set forth in those rules.²⁹ Thus, incumbents do not receive the full amount of the difference between their costs and the national average. They are only entitled to 76%. The same should be true for ETCs. Such an approach would be consistent with the Commission’s goal of “competitive neutrality.”

²⁷ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating To High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, *Public Notice*, 18 FCC Rcd 1941, 1950, ¶ 21 (2003) (“*Public Notice*”).

²⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 18 FCC Rcd 22559, 22590, n.180 (2003); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report & Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20465, 20467-68, ¶¶ 58, 63, (1999), *remanded*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (“*Ninth Report & Order*”).

²⁹ *Ninth Report & Order*, 14 FCC Rcd at 20467-68, ¶ 63.

V. THE COMMISSION SHOULD ADOPT A CERTIFICATION REQUIREMENT FOR WIRELESS CARRIERS SEEKING ETC STATUS

In response to the Joint Board's recommendation that the Commission further develop the record on defining mobile wireless customer location for universal service purposes,³⁰ BellSouth proposes a slight modification to the current approach.³¹ Today, wireless providers use the customer's "billing address" to identify the service of that customer.³² As the Commission has recognized, there are flaws inherent in the use of the "billing address" as the basis of support that could lead to potential abuses.³³

BellSouth supports a proposal previously endorsed by the Washington Independent Telephone Association recommendation ("WITA"). Under WITA's proposal, a wireless carrier would "be required to certify that at least fifty percent of the calls originated on that service originated in a cell site within the exchange for which the line is to be designated as a supported line."³⁴ BellSouth believes that this certification requirement would help ensure that high-cost support is appropriately being used to provide service in the designated high-cost area.

³⁰ See *Recommended Decision*, 19 FCC Rcd at 4300, ¶ 102.

³¹ See *Public Notice*, 18 FCC Rcd at 1952, ¶ 25.

³² 47 C.F.R. § 54.307(b).

³³ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45 & 00-256, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256*, 16 FCC Rcd 11244, 11315-16, ¶ 183 (2001).

³⁴ WITA Comments at 14, CC Docket No. 96-45 (Filed May 5, 2003).

VI. CONCLUSION

For all of the foregoing reasons, BellSouth urges the Commission to take the actions requested herein.

Respectfully submitted,

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August 6, 2004

CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of August 2004 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing addressed to the parties listed below.

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